REMARKS

I. General

The following items were raised in the present Office Action:

- The Examiner has objected to the drawings and has requested corrected drawings.
- Claim 2 stands rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement.
- Claims 1, 3, 4, 6-9 stand rejected under 35 U.S.C. § 102(b) as being anticipated by The Hop Picking Year article (hereinafter *Hop*).
- Claims 2, 5 and 10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hop in view of French Application FR2797559A1 to Gaudru (hereinafter *Gaudru*).

Applicants traverse the rejections and request reconsideration in light of the following remarks and amendments. Claim 2 has been amended to address the Examiner's § 112 rejection, and no new matter has been entered. Claims 1-10 are pending in this application.

II. Objections to Drawings

The Examiner has objected to the drawings because the drawings must show every feature of the invention specified in the claims. As claim 2 has been amended to delete the step of twisting said flexible material around said growing unit, Applicants request that this objection be withdrawn.

III. § 112 Rejection

Claim 2 stands rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. As claim 2 has been amended to delete the step of twisting said flexible material around the growing unit, Applicants request that this rejection be withdrawn.

IV. § 102 Rejection

Claims 1, 3, 4, 6-9 have been rejected under 35 U.S.C. § 102(b) as being anticipated by *Hop*. Applicants traverse this rejection. A reference is proven to be a "printed publication" "upon a satisfactory showing that such document has been disseminated or otherwise made available to the extent that persons interested or and ordinarily skilled in the subject matter or art exercising reasonable diligence, can locate it." *See* M.P.E.P. § 2128 (citing *In re Wyer*, 655 F.2d 221 (CCPA 1981) (quoting *I.C.E. Corp. v. Armco Steel Corp.*, 250 F. Supp. 738, 743 (S.D.N.Y. 1966)). Although *Hop* appears to have been first created in 1958, the copy of *Hop* provided by the Examiner does not appear to have been first placed on the Internet until after Applicants' filing date. *See* Internet Archive Wayback Machine search for http://www.bygonebodiam.co.uk/Hop_Training.htm. Prior art disclosures on the Internet are considered to be publicly available as of the date the item was publicly posted. *See* M.P.E.P. § 2128. Thus, *Hop*, in the form provided by the Examiner, may not be considered as prior art to Applicants' invention as the date of publication falls after Applicants' filing date.

Further, the Examiner has not shown that a presumption may be raised that the portion of the public concerned with the art would know of the invention in *Hop*. *See* M.P.E.P. § 2128.01 (citing *In re Bayer*, 568 F.2d 1357 (CCPA 1978)). With respect to an article, such as *Hop*, an article disseminated by mail is not prior art until it is received by at least one member of the public, and thus, the date when the first person received the article is the effective date of publication, not the date it was mailed or sent to the publisher. *See* M.P.E.P. § 2128.02 (citing *In re Schlittler*, 234 F.2d 882 (CCPA 1956)); *see also Carella v. Starlight Archery*, 804 F.2d 135, 231 USPQ 644 (Fed. Cir. 1986)). Although the date on *Hop* indicates that it was created in 1958, there is no indication that *Hop* was received by anyone nor has the Examiner shown that the portion of the public concerned with the art would know of *Hop*. Therefore, the Examiner has not demonstrated that *Hop* is a proper 102(b) printed publication, and accordingly, claims 1, 3, 4, and 6-9 should be rendered patentable.

V. § 103 Rejection

Claims 2, 5 and 10 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Hop* in view of *Gaudru*. Applicants hereby traverse these rejections. As discussed with

respect to the Examiner's rejection of claims 1, 3, 4, and 6-9 under 35 U.S.C. § 102(b), Applicants believe that the Examiner has not shown that *Hop* is a proper prior art reference. As claim 2 depends directly from base claim 1, claim 5 depends directly from base claim 4, and claim 10 depends directly from base claim 9, these claims also should be rendered patentable for at least the reasons stated with respect to claims 1, 3, 4, and 6-9.

VI. Conclusion

In view of the above remarks, Applicants believe the pending application is in condition for allowance. Applicants believe that a fee of $120.00 is due with this response. However, if there is any further amount due, please charge Deposit Account No. 06-2380, under Order No. 48550/P003US/10309896 from which the undersigned is authorized to draw.

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Respectfully submitted,

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